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BY ECF

The Honorable P. Kevin Castel
United States District Judge
U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *The New York Times Company v. CIA*, 18 Civ. 3014 (PKC)

Dear Judge Castel:

This letter responds to the Court's Order of Initial Pretrial Conference (Dkt. No. 6), dated April 11, 2018, directing the parties to submit a joint letter in advance of the initial pretrial conference, scheduled for 11:15 am on June 29, 2018. This letter provides: (1) a brief description of the case, including the factual and legal bases for the claims and defenses; (2) any contemplated motions; and (3) the prospect for settlement. The parties also respectfully request an adjournment of the Initial Pretrial Conference and propose the following schedule: by July 31, 2018, the Government will complete its updated search for records responsive to the Freedom of Information Act request. The parties will then confer to determine what, if any, disputes exist, and will submit a joint status update to the court on or before August 10, 2018.

Because this is an action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), we understand Local Civil Rule 16.1 to exempt it from the requirement of a mandatory scheduling order contained in Fed. R. Civ. P. 16(b). Accordingly, the parties respectfully request that they be relieved of their obligation under the April 11, 2018 Order to submit a copy of the Court's Civil Case Management Plan and Scheduling Order, which we understand to be designed to fulfill that requirement. Moreover, no such scheduling order is needed because the parties expect that this case, like most FOIA cases, will be resolved through settlement, or on cross-motions for summary judgment without the need for discovery. *See Wood v. F.B.I.*, 432 F.3d 78, 84 (2d Cir. 2005).¹

¹ One issue addressed in the Court's Civil Case Management Plan and Scheduling Order that does not relate to a schedule for discovery is whether all parties consent to conducting all further proceedings before a United States Magistrate Judge. At the present, the parties do not consent to Magistrate assignment.

Brief description of the case. As alleged in Plaintiffs' complaint, Plaintiffs' FOIA request seeks documents relating to the employment, work, and death of Army and CIA scientist Frank R. Olson; and documents from 1949 to 1972 relating to the Special Operations Division in Fort Detrick, Maryland. *See* Complaint ¶ 12. Plaintiffs previously requested these documents in a prior FOIA request, to which the CIA responded in 2003. *See id.* ¶¶ 9-12. The CIA has not yet completed its updated search for responsive records in response to this later FOIA request. Following the completion of that search, the parties will confer to determine whether any disputes exist. Should the case proceed to litigation, the main disputes will likely concern the adequacy of the search and/or the legal propriety of any withholdings.

Contemplated motions. If the parties' efforts to resolve the case without litigation are unsuccessful, it is likely that the parties would file cross-motions for summary judgment as to the adequacy of the government's search and/or the propriety of any withholdings.

Prospect for settlement. As noted above, the government is currently completing its updated search for responsive records. If plaintiffs are satisfied with the adequacy of the search and the records produced, the case may be resolved without the need to litigate any issues. This will depend in substantial part on the outcome of the search.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/
David E. McCraw

cc: Jacob Lillywhite, AUSA
(via email)